elsewhere.[66] Neither questions that consumers in these corridors are better off because of price competition from the incumbent Bell company.[67] Recent marketing arrangements between Qwest and two Bell companies further indicate the competitive pressure full Bell company entry into in-region interLATA services would place on the major incumbents. See Hausman Aff. ¶ 21.

2. BellSouth Is Suited To Break Up the Interexchange Oligopoly in Louisiana

BellSouth will offer consumers these same sorts of competitive benefits when it provides in-region, interLATA service in Louisiana. BellSouth has an affirmative incentive to lower long distance prices in Louisiana: Not only will BellSouth enter this market with zero market share, but increased interLATA usage will increase usage of BellSouth's access services as well. See id. ¶¶ 13-15. Indeed, BellSouth has committed, upon receiving interLATA authority, to setting its initial basic rates at least 5 percent lower than the corresponding rates of the largest interexchange carrier. See Harralson Testimony at p. 1219 (App. C, Tab 68).

All types of consumers will benefit from this increased competition. For example, in addition to authorizing carriage of calls "originating in" Louisiana under section 271(b)(1), approval of this application will further benefit competition by allowing BellSouth to provide interLATA toll-free and private line services under section 271(j). BellSouth thus will be able to

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[66] See id. at 1, 5; MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) ("MCI Comments") (petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T") (App. D, Tab 9).

[67] See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

provide customers in Louisiana inbound 800 and 888 service from any location across LATA boundaries (relief that was granted to the BOCs for out-of-region customers under sections 271(b)(2) and 271(j)). This approval will also allow BellSouth to provide interLATA, advanced data services in its region, furthering the purposes underlying section 706 of the 1996 Act, 47 U.S.C. § 157 note.

BellSouth has honed its marketing skills as a wireless carrier in Louisiana, as well as a provider of other competitive offerings such as exchange access to business customers, Centrex service, customer premises equipment, and directories. These experiences will enable BellSouth to provide better interexchange services to Louisiana and to sell them effectively. See Schmalensee Aff. ¶¶ 47-49. BellSouth also could reduce costs by using existing sales and customer support systems (in compliance with the requirements of section 272). See Gilbert Aff. ¶¶ 24-28; Schmalensee Aff. ¶ 48. AT&T secured approval to acquire McCaw in part on such grounds.[68]

Above all, BellSouth's brand name will make it a strong competitor to the three major incumbents. The BellSouth brand is recognized by approximately 70 percent of consumers in BellSouth's region — less than AT&T and MCI, but high in relation to other potential entrants into long distance. Gilbert Aff. ¶ 17. BellSouth's reputation is on par with that of the major incumbent interexchange carriers: better than three out of four customers rated BellSouth as "very good" in the categories of customer service and service reliability/product quality. Schmalensee Aff. ¶ 44. Indeed, BellSouth received the highest customer satisfaction rating of

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[68] Memorandum Opinion and Order, Applications of Craig O. McCaw, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd sub nom. SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995) ("McCaw Order").

any major LEC in a J.D. Power survey.[69] These factors will give BellSouth lower marketing costs in-region than other potential new entrants and position BellSouth as a serious competitor to AT&T, MCI, and Sprint.[70]

BellSouth's marketing strength will be most pronounced among current BellSouth customers who are part of a low-volume market segment that is neglected in the competition among interexchange carriers. Id. Aff. ¶ 38. The failure of the three large carriers to market services to this group leads many residential and small business customers to choose AT&T out of inertia, without giving other carriers serious consideration. See id. ¶¶ 38-40. If BellSouth (and other Bell companies across the country) can make competitive inroads, however, AT&T, MCI, and Sprint are likely to respond with new promotions and expanded eligibility for targeted offerings, to the benefit of low-volume callers. Id. ¶ 40.

Likewise, BellSouth will be able to offer bundled service offerings and "one stop shopping." Bundled service packages can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different services.[71] The Commission thus has supported developments that promise to speed the

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[69] J.D. Power & Associates, 1997 Residential Local Telephone Study, RBOCs Achieve Higher Customer Satisfaction than Independent Carriers: BellSouth Top Carrier for Second Year, Aug. 26, 1997 <http://www.jdpower.com/releases/70826pho.html>.

[70] See Schmalensee Aff. ¶ 49; Gilbert Aff. ¶ 28; see also McCaw Order, 9 FCC Rcd at 5871-72, ¶ 57 (AT&T's acquisition of McCaw would serve the public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

[71] McCaw Order, 9 FCC Rcd at 5879-80, ¶¶ 73-75; see also 142 Cong. Rec. S714 (daily ed. Feb. 1, 1996) (statements of Sen. Harkin) (1996 Act will allow "low cost integrated service, with the convenience of having only one vendor and one bill to deal with"); S. Rep. No. 104-23, at 43 (1995) (joint offerings constitute a "significant competitive marketing tool"); Gilbert Aff. ¶ 16 ("Consumers will benefit from the integration of service offerings and the marketing of bundled

introduction of bundled services at the retail level. This was one reason why AT&T's buyout of McCaw Cellular Communications was approved by the Commission, which concluded that it "would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification" for doing so. McCaw Order, 9 FCC Rcd at 5880, ¶ 75; see Gilbert Aff. ¶ 19.

BellSouth will not be the only, or even the first, carrier to market bundled offerings, and it will have no unfair advantage in providing bundled packages. See Gilbert Aff. ¶¶ 7-16.[72] Bundled offerings are the cornerstone of interexchange carriers' plans for entering the local exchange. A study by the Yankee Group found that two-thirds of households are likely to sign up with one company for all their telecommunications services, with the majority choosing their current long distance carrier as that sole provider.[73] A similar study by Deloitte & Touche indicates that nearly 70 percent of business customers surveyed named interexchange carriers as their preferred provider of bundled, "one-stop shopping" services.[74] Given BellSouth's

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products through convenience and through the increased number and variety of telecommunications options available in the marketplace."); Hausman Aff. ¶ 8.

[72] As Professor Gilbert explains, "[a]ny argument that the offering of integrated packages of local and long distance services could lead to a return of the market structure that existed prior to the Modification of Final Judgment ("MFJ") is not justified by market realities. The structure of the telecommunications marketplace has changed dramatically since the MFJ's break-up of AT&T. Not only will there now be several competitors offering packages in a given geographic market, but the local and long distance markets separately will be subject to competition." Gilbert Aff. ¶ 23.

[73] Yankee Group Press Release, Yankee Group Survey Finds AT&T Is Top Choice for Consumers Interested in Single Communications Provider, Jan. 20, 1998.

[74] Deloitte & Touche Consulting Group, Fourth Annual Telecommunications Competition Survey: Business Users' Perspectives On Competition Issues 6 (1998). The study also stated that interexchange carriers were responsible for 80 percent of business customers' defections from incumbent LECs for the provision of local service. Id. at 4.

satisfaction of the competitive checklist, and thus the openness of local markets in Louisiana according to Congress's dispositive test, all other carriers will have the same opportunity as BellSouth to offer bundled packages of interLATA and intraLATA services. Indeed, the major interexchange carriers already are well down that road.[75] Even the smaller CLECs have begun offering bundled services, albeit only to the more lucrative business customers; they freely admit that the ability to bundle services currently is one of their biggest advantages over incumbent LECs.[76]

Approval of BellSouth's petition also will lift remaining prohibitions on BellSouth's participation in telecommunications equipment manufacturing and allow BellSouth to pursue all opportunities in this area, subject to statutory and regulatory safeguards. See 47 U.S.C. § 273(a); S. Rep. No. 104-23, at 67 (allowing Bell companies to engage in manufacturing will "foste[r] competition . . . and creat[e] jobs along the way"). See generally Kettler Aff.

Finally, approval of this application will trigger "1+" intraLATA competition in Louisiana, intensifying competition in the intraLATA toll market as well. See 47 U.S.C. § 271(e)(2). The Louisiana PSC has issued a General Order establishing regulations for 1+

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[75] AT&T has announced that it plans to "take a basic $25-a-month long distance customer and convert him or her into a $100-a-month customer for a broader bundle of services." AT&T Challenges the Bell Companies, Wall St. J., June 12, 1996, at A3. MCI is offering long distance, cellular service, Internet access, and MCImetro local service on the same bill in some states. See <http://www.mci.com> (listing links for product services). Sprint is bundling its long distance offerings with local wireline service, cable television, Internet, and PCS offerings. See <http://www.sprint.com> (listing links for product services). MFS/WorldCom's President has stated that his company is "creating the first company since the breakup of AT&T to bundle together local and long-distance service carried over an international end-to-end fiber network owned or controlled by a single company." Communications Firms To Join in $12-Billion Deal, L.A. Times, Aug. 27, 1996, at A-1.

[76] See Residential Entry Debated: CLEC Executives at ALTS See Continued Buildouts, Dependence on New Capital, Communications Daily, May. 5, 1998, at 6.

presubscription, and BellSouth has filed a tariff with the State commission for services that will be required to implement intraLATA toll dialing parity. Varner Aff. ¶ 209 & Exs. AJV-7&8. These tariffed offerings will become effective when BellSouth provides interLATA services in Louisiana. Id. ¶ 209. IntraLATA toll presubscription will be implemented using a two-PIC method, allowing the customer to choose different carriers for intraLATA toll and interLATA calls. Id. ¶ 210.

Approval of BellSouth's application will speed expansion of the Louisiana economy. It is estimated that BellSouth's entry into the interLATA long distance markets throughout Louisiana will by the year 2006 generate an additional 7600 new jobs in the state and increase the gross state product by approximately $922 million. WEFA Study at 1-2, 17 & 18, at Figure 6. An independent economist, Loren Scott, Chairman of the Economics Department and Director of the Economic Development and Forecasting Division of Louisiana State University, has confirmed that the WEFA model was based on reliable assumptions and that its results are reasonable and conservative estimates. Scott Aff. at 5 (App. C, Tab 23).

In other proceedings, the incumbent interexchange carriers and DOJ have questioned the magnitude of the consumer savings that will result from Bell company entry into long distance. See DOJ South Carolina Evaluation at 48-49. The important thing, however, is the indisputable fact of significant consumer benefits from greater interLATA competition. DOJ's consultant, for instance, "expect[s] price reductions." Schwartz Supp. Aff. ¶ 77 (filed with DOJ South Carolina Evaluation). The exact number of billions of dollars of consumer benefits is nearly immaterial for purposes of this application, because the public interest requires that consumers be allowed to reap any possible benefits from competitive markets where, as here, there are no offsetting costs.

D. BellSouth's Entry into the InterLATA Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition

For all its potential strengths as a competitor, BellSouth has absolutely no ability to impede competition by entering the interLATA market. The 1996 Act and regulatory reforms have rendered 20-year-old worries about cross-subsidy and network discrimination obsolete.

1. Regulation and Practical Constraints Make "Leveraging" Strategies Impossible To Accomplish.

In light of the federal and state safeguards that prevent Bell companies from engaging in anticompetitive conduct upon entering long distance, the Commission has held that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.[77] It found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to misallocate costs, and that existing safeguards "will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur." BOC Non-Dominance Order, 12 FCC Rcd at 15817, ¶ 105. The Commission likewise dismissed fears of predation against the established long distance incumbents, id. at 15819, ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, id. at 15821-26, ¶¶ 111-119; and concluded that any risk of price squeezes can be addressed through FCC procedures and the antitrust laws, id. at 15831-32, ¶¶ 128-129. Finally, the Commission recognized "that the entry of the BOC interLATA

[77] Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756 (1997) ("BOC Non-Dominance Order").

affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies." Id. at 15835, ¶ 134.

Each of these conclusions is buttressed by the success that federal and state regulators have had in regulating Bell companies over the years, as well as by the new, additional safeguards imposed by the 1996 Act and the Commission's implementing regulations. As a former Deputy Assistant Attorney General for Economics in the current Administration's Antitrust Division explains, existing safeguards "expressly and comprehensively" address potential harms. Gilbert Aff. ¶ 43.

a. Cost Misallocation. Theories that BellSouth might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, are premised upon the assumption that BellSouth "is regulated under rate-of-return regulation."[78] To cure this problem, the Commission has totally overhauled its approach to rate regulation. See Hausman Aff. ¶¶ 28-29. The Commission adopted a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs "a powerful profit incentive" to cut the costs of their regulated services. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices." Id.; see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136

[78] Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) ("Non-Accounting Safeguards NPRM"). DOJ contended in supporting approval of the MFJ that the Bell System's alleged practice of subsidizing its competitive offerings at ratepayers' expense "stem[med] . . . directly from AT&T's status as a rate of return regulated firm . . . ." Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. Feb. 10, 1982) (App. D, Tab __).

(Commission's price cap policies "reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services"); Hausman Aff. ¶¶ 28-29. Indeed, the Commission has described price cap regulation as providing strong "efficiency incentives" to keep down costs allocated to regulated services.[79]

Congress nevertheless took steps to address supposed worries about possible cost misallocation. In section 272 of the 1996 Act, Congress sharply reduced opportunities for cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. 47 U.S.C. § 272. Moreover, Congress reinforced structural separation with demanding accounting requirements. See id. § 272(d) Hausman Aff. ¶ 32. The Commission has expressed confidence in the efficacy of structural separation in various contexts.[80]

Beyond these statutory requirements, the Commission has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the

[79] Accounting Safeguards Order, 11 FCC Rcd at 17605-06, ¶ 145; see also Illinois Public Telecomms. Ass'n v. FCC, 117 F.3d 555, 570 (under price caps, "risk of loss" is borne by "investors rather than ratepayers"), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied, 118 S.Ct. 1361 (1998); Hausman Aff. ¶¶ 35-36. To the extent that improper cost sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission's decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform, 12 FCC Rcd 16642, 16699-703, ¶¶ 147-155 (1997); see Hausman Aff. ¶ 28.

[80] Report and Order, Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, 86 F.C.C.2d 469, 494, ¶ 50 (1981) (cellular); Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453 ¶ 177 (Bell System), aff'd sub nom. Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198, 211 (D.C. Cir. 1982) cert. denied, 461 U.S. 938 (1983).

risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order, 11 FCC Rcd at 17550-51, ¶ 25. The Commission reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system."[81]

Louisiana regulators have implemented a parallel regulatory regime that contains many of these same protections. Like the Commission, the Louisiana PSC has abandoned rate-of-return regulation in favor of price-cap regulation. See Woroch Aff. ¶ 53 (App. A, Tab 27); see also Roberts Aff. ¶ 44 (App. A, Tab 17). The Louisiana PSC also matches this Commission's accounting requirements, imposing similar record-keeping and reporting requirements and carrying out periodic audits. Cochran Aff. ¶ 14; Woroch Aff. ¶ 53.

b. Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, BellSouth would not and could not raise the cost of its access services in an effort to effectuate a "price squeeze" on other interexchange carriers.[82] The Commission has cited a host of factors that "constrain the ability of a [Bell company or its] interLATA affiliate to engage in a predatory price squeeze," and concluded that Bell companies "will not be able to engage in a price squeeze to such an extent that the [Bell company] interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output." BOC Non-Dominance Order, 12 FCC Rcd at 15832, ¶ 129; see also Access Reform Order, 12

[81] 11 FCC Rcd at 17551, ¶ 28, 17586, ¶ 108; see also First Report and Order, Access Charge Reform, 12 FCC Rcd 15982, 16104, ¶ 283 (1997) ("Access Reform Order") (price caps protect against cross-subsidization).

[82] See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

FCC Rcd at 16101, ¶ 278 ("we have in place adequate safeguards against such conduct"). The Commission likewise concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing. BOC Non-Dominance Order, 12 FCC Rcd at 15815-16, ¶ 104, 15819, ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943-44, ¶ 137; Hausman Aff. ¶¶ 30-32.

Wholly aside from regulatory safeguards, "predatory pricing schemes are rarely tried, and even more rarely successful." Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (citation omitted); see Roberts Aff. ¶ 54. In an industry with standardized technologies and sophisticated incumbents, it is "especially unlikely" that BellSouth could employ the classic predatory strategy of lowering prices below cost to affect competitors' assessments of future competition. Roberts Aff. ¶¶ 24, 46-48; see also Gilbert Aff. ¶¶ 43-46. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. Roberts Aff. ¶¶ 46-47; Hausman Aff. ¶ 32. Even AT&T has conceded that "there is little reason to fear that a BOC could monopolize the interexchange market" by driving the major incumbents out of business.[83]

c. Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that Bell companies might discriminate in the pricing of their exchange access services. The Commission has for years "require[d] any exchange carrier offering interexchange service to impute to itself the same costs

[83] AT&T's Opposition to Ameritech's Motions for "Permanent" and "Temporary" Waivers from the Interexchange Restriction of Decree at 26, United States v. Western Elec. Co., No. 82-0192 (DOJ filed Feb. 15, 1994) (App. D, Tab 4).

that it uses to develop the access rates that it charges its interexchange customers." Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2714, ¶ 168 (1991). Consistent with that regulatory requirement, Congress specifically provided that the Bell company must charge its affiliate, or impute to itself, "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." 47 U.S.C. § 272(e)(3). The Commission thus rightly has concluded that "the statutory and regulatory safeguards . . . will prevent a [Bell company] from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services." BOC Non-Dominance Order, 12 FCC Rcd at 15825, ¶ 119.

d. Technical Discrimination. Theories that BellSouth might impede competition by engaging in technical discrimination are equally unfounded. AT&T/WorldPartners, MCI/WorldCom, and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with revenues much greater than BellSouth's and the expertise and resources to detect and challenge systematic discrimination. See Gilbert Aff. ¶¶ 46-47, 49. Cf. United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir.) ("[I]nformation service giants operating throughout the country, such as IBM, AT&T and GE, will notice any discrepancies in treatment by the various BOCs and will have the capacity and incentive to bring anticompetitive conduct to the attention of regulatory agencies."), cert. denied, 510 U.S. 984 (1993).

Indeed, to state how discrimination against the incumbent carriers would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, BellSouth would have to provide inferior access services to its major competitors, without disrupting its own local or long distance services, in a fashion that cannot be proved by other interexchange carriers or detected by regulators, yet is so apparent to customers that it drives them to switch to BellSouth's long distance service, but not the service of some other competitor. See Hausman Aff. ¶ 34; see also Gilbert Aff. ¶¶ 46-47 (no harm to competition unless discrimination raises consumer prices). When one considers these realities, it is not surprising that incumbent interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices. Competitively meaningful discrimination simply cannot go undetected.

Furthermore, BellSouth has been providing exchange access services to the long distance industry for over a dozen years. Interexchange carriers can and do directly monitor BellSouth's performance, making it "likely that an IXC would detect any degradation in BellSouth's access service long before any customer could notice that degradation and attribute it to the IXC." Gilbert Aff. ¶¶ 46-47. BellSouth's interconnection arrangements with all the major interexchange carriers establish specific criteria for service quality and procedures for the interexchange carrier to monitor BellSouth's performance. Smith Aff. ¶¶ 28-32 (App. A, Tab 21). In addition, BellSouth is required to file various reports, of proven effectiveness, with the Commission. See Gilbert Aff. ¶ 48; Smith Aff. ¶ 33. And, BellSouth is subject to rigorous industry standards which "neither BellSouth, nor RBOCs generally, nor anyone else is able to affect or influence . . . without technical justification and industry consensus." Smith Aff. ¶ 20; see Woroch Aff. ¶¶ 30-31.

The Commission recently rejected additional reporting requirements because "sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements." Non-Accounting Safeguards Order, 11 FCC Rcd at 22060-61, ¶ 321. Indeed, the Commission explained that "the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements." Id. at 22063-64, ¶ 327.

Suggestions that a BOC might seek to slow-roll interexchange carriers in developing and implementing new access arrangements are equally unfounded. The 1996 Act provides that a BOC "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards," 47 U.S.C. § 272(c)(1); must fulfill "any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates," id. § 272(e)(1); and may not provide facilities, services, or information concerning exchange access to its long distance affiliate unless they are made available to other providers of interLATA service on the same terms and conditions, id. § 272(e)(2) and (4). See Gilbert Aff. ¶¶ 42-43; Woroch Aff. ¶ 61.

Regulators should have no trouble enforcing these requirements. Existing rules relating to enhanced services and customer premises equipment currently protect against analogous discrimination. See Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18915-16, ¶ 75. Moreover, interstate access revenues account for nearly one-quarter of BellSouth Telecommunications' total operating revenues, 1997 Annual Report at 18. BellSouth thus has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase demand for its exchange access services and avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a facilities-based competitor to BellSouth. See Schmalensee Aff. ¶ 56. All that will be required in the context of new exchange access arrangements is an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and BellSouth, which leave no room or reason for misconduct.

e. Misuse of Confidential Information. Section 272(c)(1) prohibits a Bell company from discriminating "in the provision or procurement of goods, services, facilities, and information." The Commission has interpreted "information" in section 272(c)(1) so that it "includes, but is not limited to, CPNI and network disclosure information." Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. Accordingly, a BOC must make such information available to other interexchange carriers on the same terms and conditions as its own long distance affiliate. Id. In its recent rulemaking implementing the customer privacy requirements of 47 U.S.C. § 222, the FCC determined that the safeguards established by that section appropriately address potential anticompetitive use of CPNI by a BOC offering in-region, interLATA services.[84]

[84] Second Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, 13 FCC Rcd 8061, 8172-79, ¶¶ 155-169 (1998).

f. Penalties. In light of its inability to engage in cost misallocation or any form of discrimination, there simply would be no reason for BellSouth to risk the substantial penalties likely to follow such a fruitless endeavor. If BellSouth were to violate any provision of the Communications Act it would be subject to civil fines, 47 U.S.C. § 202(c), and would be liable to injured parties for the amount of their injuries plus attorneys' fees, id. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of statutory or regulatory provisions. Moreover, if the Commission determines that BellSouth "has ceased to meet any of the conditions required for" interLATA entry, it may revoke interLATA authority under section 271(d)(6).[85]

All of the Act's and the Commission's specific statutory and regulatory protections are backed up by federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it most unlikely that Bell company managers would order unlawful practices.[86]

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[85] The Commission has ruled that once a complainant makes a prima facie showing that a Bell company has "ceased to meet the conditions of entry," the burden shifts to the Bell company to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345. This is a complete answer to claims that discrimination and cross-subsidy, even though detectable, might be hard for rival interexchange carriers to prove.

[86] See, e.g., 15 U.S.C. §§ 1, 2 (Sherman Act); United States Sentencing Comm'n, Guidelines Manual § 2R1.1 (1998) (requiring prison sentences for a number of antitrust violations).

Given its own decisions noting the strength of all these various statutory and regulatory protections, the Commission could hardly find them inadequate to the task in this case. Moreover, the Commission determined, in approving British Telecom's proposed acquisition of MCI, that regulations in the United Kingdom "ensure proper cost allocation, timely and nondiscriminatory disclosure of network technical information, and protection of carrier and consumer proprietary information against unauthorized disclosure," and thereby "contro[l] BT's market power" in the provision of access services. Memorandum Opinion and Order, Merger of MCI Communications Corp. and British Telecommunications plc, 12 FCC Rcd 15351, 15429, ¶ 203 n.288 (1997). The United Kingdom's safeguards, however, are weaker than those under the Act and the FCC's regulations, see id. at 15436-39, ¶¶ 218-223, and do not even include equal access, unbundling, or resale, id. at 15429, ¶ 202. If the United Kingdom's regulations and the potential for future competition would have been sufficient to prevent harm from British Telecom's vertical integration with MCI, see id. at 15432, ¶ 210, then the much stronger U.S. safeguards and the openness of Louisiana markets to competitors under the checklist must be sufficient to address any analogous concerns raised in this proceeding.

2. Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential

BellSouth's inability to raise prices or restrict output as an interexchange carrier in Louisiana is confirmed by over a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. As noted earlier, local exchange carriers have competed fairly and effectively where they have been permitted to offer long distance. The same is true of BOC participation in the information services and CPE markets. See Hausman Aff. ¶ 27. One would not have expected such competitive benefits based on the doomsday predictions of potential competitors, which were of the same ilk as the arguments they will make in opposing this application.

The New Jersey Corridors. When NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the district court credited suggestions that allowing such service would give "the Operating Companies the same incentive to discriminate against the new entrants that they had while part of the integrated Bell [S]ystem," and that it "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic." United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Yet these (now merged) Bell companies do not dominate corridor traffic. By AT&T's own count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. AT&T and MCI have sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local "bottlenecks," but rather because their prices are being undercut. See id. at 5; MCI Comments at 3. Disproving the predictions of potential competitors, Bell Atlantic and NYNEX have benefited consumers by lowering prices.

SNET in Connecticut. Similarly, all the evidence suggests that SNET's competitive success in Connecticut is due to its lower prices, not to any anticompetitive behavior. See Hausman Aff. ¶¶ 17, 21, 35. AT&T does not allege that SNET has gained market share through anticompetitive conduct, but rather attributes SNET's success to lower prices. Id.; see also Gilbert Aff. ¶ 53 (no complaints against SNET). Moreover, competition between SNET and AT&T is vigorous, leading AT&T to ask for permission to reduce prices along with SNET in order to preserve its market share. See supra pp. 83-84.

GTE/Sprint. GTE's ownership of Sprint proves the same point on a larger scale. See Gilbert Aff. ¶¶ 51-52. As the fourth largest LEC and the incumbent carrier across large geographic areas, GTE had the same theoretical incentives to impede interexchange competition as would a Bell company entering the long distance market today. See United States v. Western Elec. Co., 993 F.2d at 1579 (explaining relevance of GTE experience). Indeed, when seeking to place conditions on GTE's purchase of Sprint in 1984, the DOJ argued that, because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services," it necessarily would have "the incentive and the ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984).

Yet, after the acquisition was completed, Sprint never was able to accumulate disproportionate market share in areas served by a GTE telephone company. The DOJ found no pattern of discrimination by GTE in favor of Sprint, Gilbert Aff. ¶ 52, and even AT&T and MCI have had to concede that GTE's monopoly power in the local exchange never enabled it to "achieve market power" in its in-region interLATA market.[87] As further evidence of its inability to earn monopoly profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. Gilbert Aff. ¶ 51.

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[87] MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C., Dec. 9, 1994) (App. D, Tab __); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree at 159, United States v. Western Electric Co., No. 82-0192 (D.D.C. filed Dec. 7, 1994).

Cellular Services. Similarly, given that cellular carriers and interexchange carriers have similar local interconnection arrangements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region States. See id. ¶ 27. As with interexchange services, moreover, predictions of future harm to the public interest preceded Bell company participation in the cellular business. See, e.g., 825-845 MHz Inquiry, 86 F.C.C.2d at 469, 530-31, 540-43, 550-51, 643 (summarizing comments of Millicom, Telocator, and the DOJ).[88]

Yet, this theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems. The Commission has confirmed "the infrequency of interconnection problems" between LECs and unaffiliated cellular providers. Report and Order, Eligibility for the Specialized Mobile Radio Services, 10 FCC Rcd 6280, 6293, ¶ 22 (1995). Indeed, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." McCaw Order, 9 FCC Rcd at 5861-62, ¶ 38.

The Bell companies, who would know if incumbent local telephone companies could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems

[88] In comments to BellSouth's first Louisiana section 271 application, the Independent Payphone Service Providers for Consumer Choice ("IPSPCC") raised several allegations focusing on BellSouth Public Communications, Inc. ("BSPC"), an indirect subsidiary of BST. These allegations do not have any merit; indeed, it appears that the IPSPCC is both mistaken as to the facts and unaware of Congress's mandate — and this Commission's efforts — to deregulate the payphone industry. See generally 47 U.S.C. § 276. Contrary to the IPSPCC's contentions, neither BST nor BSPC has discriminated against IPSPCC members or undertaken any unjust or unreasonable marketing practice that violates section 201(b) or 202(a) of the Communications Act. See Affidavit of Melvin R. Shinholster (App. A, Tab 20).

that compete with the incumbent LEC's systems. BellSouth, for instance, competes against an incumbent LEC's wireless affiliate in Hawaii, California, Illinois, and Indiana. Such investments would never be made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies have no ability to overwhelm competitors in wireless; it bought the nation's largest cellular carrier and has invested billions more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge.

E. The Effect of BellSouth's Entry on Local Competition

Nor will there be any harm to competition in the Louisiana local market as a result of BellSouth's interLATA entry. To the contrary, the expert agency on local telecommunications in Louisiana found that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Compliance Order at 14 (emphasis added). The Louisiana PSC's conclusion is consistent with common sense, economic theory,[89] and the findings of other State commissions. For example, the South Carolina PSC explained that allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market . . . , because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." South Carolina Order, 13 FCC Rcd at 553, ¶ 25 n.45. The Oklahoma Corporation Commission similarly determined in connection with section 271 relief that "once full long distance competition is opened up in Oklahoma, the major competitive

[89] See Woroch Aff. ¶¶ 17-19, 79-86 (noting incentives of CLECs, absent BellSouth interLATA entry, to "go slow" in Louisiana and to pursue markets that offer greater profit margins); Hausman Aff. ¶¶ 9-10.

providers of local exchange service will take notice and adjust their respective business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers."[90] This Commission itself has recognized that, as a general matter, Bell company entry into interLATA services "would surely give long distance carriers an added incentive to enter the local market." South Carolina Order, 13 FCC Rcd at 552-53, ¶ 25.[91]

Approving BellSouth's application, moreover, would provide the Big Three long distance carriers with the ability to compete more effectively as CLECs. These carriers are temporarily prohibited from bundling any wholesale services they obtain from BellSouth in Louisiana with interLATA services. BellSouth's entry will release the interexchange carriers from this prohibition, 47 U.S.C. § 271(e)(1), and produce the result Congress envisioned: enhanced competition in both local and long distance markets. S. Conf. Rep. No. 104-230, at 1 (1996) (Act intended to "ope[n] all telecommunications markets to competition"); see Gilbert Aff. ¶¶ 18-23 (noting benefits to competition and consumers of bundled offerings); Hausman Aff. ¶ 9 (same).

It is simply wrong to suggest that there would be consumer benefits from further delaying long distance competition in the name of possible local competition. The 1996 Act's temporary prohibition on bundling by the major interexchange carriers pending BellSouth's interLATA

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[90] Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997).

[91] In its South Carolina Order, the FCC determined that interexchange carriers might not be able to enter the local market because BellSouth had not satisfied all checklist requirements. As explained in Part II, supra, the same cannot be said of BellSouth in Louisiana.

entry is the <u>only</u> barrier remaining to full local competition in Louisiana. Now that the local market is open, CLECs will enter the segments of the market they wish to serve at their own pace, in accordance with their own business plans. As long as regulators require BellSouth and other local carriers to price some services (such as exchange access) above competitive levels in order to subsidize other services (such as basic residential service), rational competitors will construct facilities where BellSouth is required to charge inflated prices, while reselling BellSouth's service where BellSouth's prices are kept artificially low. BellSouth is powerless to force CLECs to enter the local telephone business in any particular manner — say, by requiring facilities-based service to residences — and withholding interLATA relief from BellSouth would not change that fact.

Nor could BellSouth "backslide" on its firmly established steps to open the local telephone business. BellSouth has made irreversible investments in opening the local market, has developed a track record of performance, and has instituted significant system changes and performance measurements. In addition, sections 251 and 252 of the Communications Act and all substantive requirements of the 1996 Act, as well as FCC orders implementing those sections — not to mention the antitrust laws — will fully apply to BellSouth's local operations, just as they govern the operations of other incumbent LECs. Section 271(d)(6) also gives the FCC special tools to ensure BellSouth's continued compliance with the prerequisites of interLATA relief. If BellSouth failed to meet any of its statutory or Commission-imposed obligations, CLECs that closely monitor BellSouth's performance would no doubt report those violations to the FCC, the Louisiana PSC, or the courts.

Delaying section 271 relief in Louisiana would deny consumers added choice and competitive benefits in the interLATA market. There would be no offsetting benefits (but rather, parallel consumer losses) in the local market. As the former Chairman of the FCC has put it, "[c]ompetition delayed is competition denied."[92]

CONCLUSION

Louisiana consumers have been denied the benefits of a competitive interLATA telecommunications market long enough. Although the local market in Louisiana is open, and CLECs are entering that market on a substantial scale, the interLATA market remains firmly closed to an important new entrant. The Commission should end that situation by authorizing BellSouth to provide in-region, interLATA services under section 271. Because BellSouth has satisfied all specific statutory prerequisites to provide interexchange services in Louisiana and such service would promote the public interest, the application should be granted.

[92] Separate Statement of Chairman Reed Hundt at 6, Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, 12 FCC Rcd 16436, 16507 (1997).

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